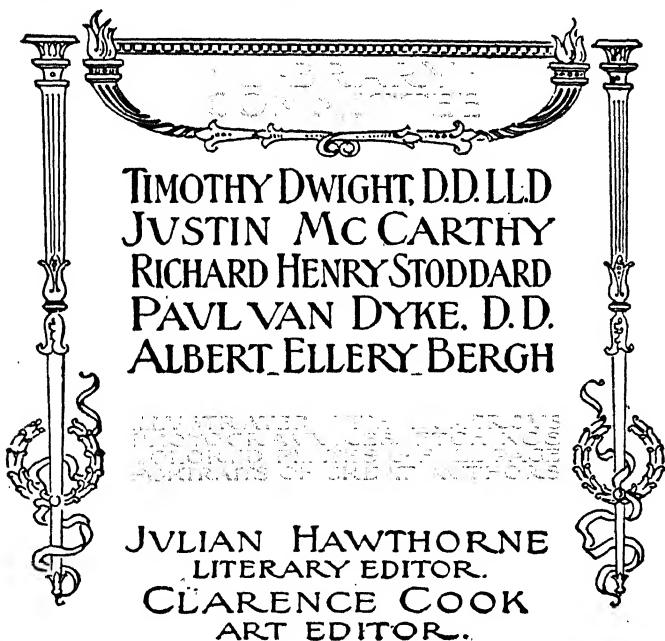


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· THE · COLONIAL · PRESS ·
· NEW · YORK · · LONDON ·

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1987

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THE UNIVERSITY OF CHICAGO PRESS

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(CHARLES DE SECONDAT)

INCLUDING D'ALEMBERT'S ANALYSIS OF THE WORK

TRANSLATED FROM THE FRENCH BY
THOMAS NUGENT, LL.D.

WITH A SPECIAL INTRODUCTION BY
HON. FREDERIC R. COUDERT, J.U.D., LL.D.

REVISED EDITION

VOLUME II

FIFTH AVE

NEW YORK

NOV 10 1890

ILLUSTRATIONS

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ience established at Formosa,^f where the husband enters into the family of the wife.

This law, which fixes the family in a succession of persons of the same sex, greatly contributes, independently of the first motives, to the propagation of the human species. The family is a kind of property: a man who has children of a sex which does not perpetuate it is never satisfied if he has not those who can render it perpetual.

Names, whereby men acquire an idea of a thing which one would imagine ought not to perish, are extremely proper to inspire every family with a desire of extending its duration. There are people among whom names distinguish families: there are others where they only distinguish persons: the latter have not the same advantage as the former.

5.—*Of the several Orders of lawful Wives*

Laws and religion sometimes establish many kinds of civil conjunctions; and this is the case among the Mahommedans, where there are several orders of wives, the children of whom are distinguished by being born in the house, by civil contracts, or even by the slavery of the mother, and the subsequent acknowledgment of the father.

It would be contrary to reason that the law should stigmatize the children for what it approved in the father. All these children ought, therefore, to succeed, at least if some particular reason does not oppose it, as in Japan, where none inherit but the children of the wife given by the Emperor. Their policy demands that the gifts of the Emperor should not be too much divided, because they subject them to a kind of service, like that of our ancient fiefs.

There are countries where a wife of the second rank enjoys nearly the same honors in a family as in our part of the world are granted to an only consort: there the children of concubines are deemed to belong to the first or principal wife. Thus it is also established in China. Filial respect,^g and the ceremony of deep mourning, are not due to the natural mother, but to her appointed by the law.

By means of this fiction they have no bastard children; and where such a fiction does not take place, it is obvious that a law

^f Du Halde, tom. i. p. 165.

^g Ibid. tom. ii. p. 129.

7.—Of the Father's Consent to Marriage

The consent of fathers is founded on their authority ; that is, on the right of property. It is also founded on their love, on their reason, and on the uncertainty of that of their children, whom youth confines in a state of ignorance and passion in a state of ebriety.

In the small republics, or singular institutions already mentioned, they might have laws which gave to magistrates that right of inspection over the marriages of the children of citizens which nature had already given to fathers. The love of the public might there equal or surpass all other love. Thus Plato would have marriages regulated by the magistrates: this the Lacedæmonian magistrates performed.

But in common institutions, fathers have the disposal of their children in marriage: their prudence in this respect is always supposed to be superior to that of a stranger. Nature gives to fathers a desire of procuring successors to their children, when they have almost lost the desire of enjoyment themselves. In the several degrees of progeniture, they see themselves insensibly advancing to a kind of immortality. But what must be done, if oppression and avarice arise to such a height as to usurp all the authority of fathers? Let us hear what Thomas Gage says in regard to the conduct of the Spaniards in the West Indies.†

“According to the number of the sons and daughters that are marriageable, the father's tribute is raised and increased, until they provide husbands and wives for their sons and daughters, who, as soon as they are married, are charged with tribute; which, that it may increase, they will suffer none above fifteen years of age to live unmarried. Nay, the set time of marriage appointed for the Indians is at fourteen years for the man, and thirteen for the woman; alleging that they are sooner ripe for the fruit of wedlock, and sooner ripe in knowledge and malice, and strength for work and service, than any other people. Nay, sometimes they force those to marry who are scarcely twelve and thirteen years of age, if they find them well-limbed and strong in body, explaining a point of one of the canons, which alloweth fourteen and fifteen years, *Nisi malitia suppleat etatem.*”

He saw a list of these taken. It was, says he, a most shameful

† “A New Survey of the West Indies,” by Thomas Gage, p. 345, 3d edit.

affair. Thus in an action which ought to be the most free, the Indians are the greatest slaves.

8.—*The same Subject continued*

In England the law is frequently abused by the daughters marrying according to their own fancy without consulting their parents. This custom is, I am apt to imagine, more tolerated there than anywhere else from a consideration that as the laws have not established a monastic celibacy, the daughters have no other state to choose but that of marriage, and this they cannot refuse. In France, on the contrary, young women have always the resource of celibacy; and therefore the law which ordains that they shall wait for the consent of their fathers may be more agreeable. In this light the custom of Italy and Spain must be less rational; convents are there established, and yet they may marry without the consent of their fathers.

9.—*Of young Women*

Young women who are conducted by marriage alone to liberty and pleasure, who have a mind which dares not think, a heart which dares not feel, eyes which dare not see, ears which dare not hear, who appear only to show themselves silly, condemned without intermission to trifles and precepts, have sufficient inducements to lead them on to marriage: it is the young men that want to be encouraged.

10.—*What it is that determines Marriage*

Wherever a place is found in which two persons can live commodiously, there they enter into marriage. Nature has a sufficient propensity to it, when unrestrained by the difficulty of subsistence.

A rising people increase and multiply extremely. This is because with them it would be a great inconvenience to live in celibacy; and none to have many children. The contrary of which is the case when a nation is formed.

11.—*Of the Severity of Government*

Men who have absolutely nothing, such as beggars, have many children. This proceeds from their being in the case of a rising people: it costs the father nothing to give his heart to his

offspring, who even in their infancy are the instruments of this art. These people multiply in a rich or superstitious country, because they do not support the burden of society, but are themselves the burden. But men who are poor, only because they live under a severe government; who regard their fields less as the source of their subsistence than as a cause of vexation; these men, I say, have few children: they have not even subsistence for themselves. How then can they think of dividing it? They are unable to take care of their own persons when they are sick. How then can they attend to the wants of creatures whose infancy is a continual sickness?

It is pretended by some who are apt to talk of things which they have never examined that the greater the poverty of the subjects, the more numerous their families: that the more they are loaded with taxes, the more industriously they endeavor to put themselves in a station in which they will be able to pay them: two sophisms, which have always destroyed and will forever be the destruction of monarchies.

The severity of government may be carried to such an extreme as to make the natural sentiments destructive of the natural sentiments themselves. Would the women of America have refused to bear children had their masters been less cruel? *k*

12.—*Of the Number of Males and Females in different Countries*

I have already observed that there are born in Europe rather more boys than girls.^a It has been remarked that in Japan there are born rather more girls than boys:^b all things compared, there must be more fruitful women in Japan than in Europe, and consequently it must be more populous.

We are informed that at Bantam there are ten girls to one boy.^c A disproportion like this must cause the number of families there to be to the number of those of other climates as 1 to 5½, which is a prodigious difference. Their families may be much larger indeed; but there must be few men in circumstances sufficient to provide for so large a family.

k "A New Survey of the West Indies," by Thomas Gage, p. 97, 3d edit.

a Book XVI. chap. iv.

b See Kempfer, who gives a computation of the people of Meaco.

c "Collection of Voyages that contributed to the establishment of the East India Company," vol. i. p. 347.

13.—*Of Seaport Towns*

In seaport towns, where men expose themselves to a thousand dangers, and go abroad to live or die in distant climates, there are fewer men than women: and yet we see more children there than in other places. This proceeds from the greater ease with which they procure the means of subsistence. Perhaps even the oily parts of fish are more proper to furnish that matter which contributes to generation. This may be one of the causes of the infinite number of people in Japan^d and China^e where they live almost wholly on fish.^f If this be the case, certain monastic rules, which oblige the monks to live on fish, must be contrary to the spirit of the legislator himself.

14.—*Of the Productions of the Earth which require a greater or less Number of Men*

Pasture-lands are but little peopled, because they find employment only for a few. Corn-lands employ a great many men, and vineyards infinitely more.

It has been a frequent complaint in England,^g that the increase of pasture-land diminished the inhabitants; and it has been observed in France that the prodigious number of vineyards is one of the great causes of the multitude of people.

Those countries where coal-pits furnish a proper substance for fuel have this advantage over others, that not having the same occasion for forests, the lands may be cultivated.

In countries productive of rice, they are at vast pains in watering the land: a great number of men must therefore be employed. Besides, there is less land required to furnish subsistence for a family than in those which produce other kinds of grain. In fine, the land which is elsewhere employed in raising cattle serves immediately for the subsistence of man; and the labor which in other places is performed by cattle is there performed by men; so that the culture of the soil becomes to man an immense manufacture.

^d Japan is composed of a number of isles, where there are many banks, and the sea is there extremely full of fish.

^e China abounds in rivers.

^f See Du Halde, tom. ii. pp. 139-142.

^g The greatest number of the proprietors of land, says Bishop Burnet, finding more profit in selling their wool than

their corn, enclosed their estates; the commons, ready to perish with hunger, rose up in arms; they insisted on a division of the lands: the young king even wrote on this subject. And promotions were made against those who enclosed their lands.—“Abridgment of the History of the Reformation.”

15.—*Of the Number of Inhabitants with relation to the Arts*

When there is an agrarian law, and the lands are equally divided, the country may be extremely well peopled, though there are but few arts; because every citizen receives from the cultivation of his land whatever is necessary for his subsistence, and all the citizens together consume all the fruits of the earth. Thus it was in some republics.

In our present situation, in which lands are unequally distributed, they produce much more than those who cultivate them are able to consume; if the arts, therefore, should be neglected, and nothing minded but agriculture, the country could not be peopled. Those who cultivate, or employ others to cultivate, having corn to spare, nothing would engage them to work the following year; the fruits of the earth would not be consumed by the indolent; for these would have nothing with which they could purchase them. It is necessary, then, that the arts should be established, in order that the produce of the land may be consumed by the laborer and the artificer. In a word, it is now proper that many should cultivate much more than is necessary for their own use. For this purpose they must have a desire of enjoying superfluities; and these they can receive only from the artificer.

The machines designed to abridge art are not always useful. If a piece of workmanship is of a moderate price, such as is equally agreeable to the maker and the buyer, those machines which would render the manufacture more simple, or, in other words, diminish the number of workmen, would be pernicious. And if water-mills were not everywhere established, I should not have believed them so useful as is pretended, because they have deprived an infinite multitude of their employment, a vast number of persons of the use of water, and great part of the land of its fertility.

16.—*The Concern of the Legislator in the Propagation of the Species*

Regulations on the number of citizens depend greatly on circumstances. There are countries in which nature does all; the legislator then has nothing to do. What need is there of inducing men by laws to propagation when a fruitful climate yields a

the Lacedæmonians were an army maintained by the peasants: it was proper, therefore, that this army should be limited; without this the freemen, who had all the advantages of society, would increase beyond number, and the laborers be overloaded.

The politics of the Greeks were particularly employed in regulating the number of citizens. Plato fixes them at five thousand and forty,^m and he would have them stop or encourage propagation, as was most convenient, by honors, shame, and the advice of the old men; he would even regulate the number of marriages in such a manner that the republic might be recruited without being overcharged.ⁿ

If the laws of a country, says Aristotle, forbid the exposing of children, the number of those brought forth ought to be limited.^o If they have more than the number prescribed by law, he advises to make the women miscarry before the fetus be formed.^p

The same author mentions the infamous means made use of by the Cretans to prevent their having too great a number of children—a proceeding too indecent to repeat.

There are places, says Aristotle again,^q where the laws give the privilege of being citizens to strangers, or to bastards, or to those whose mothers only are citizens; but as soon as they have a sufficient number of people this privilege ceases. The savages of Canada burn their prisoners; but when they have empty cottages to give them, they receive them into their nation.

Sir William Petty, in his calculations, supposes that a man in England is worth what he would sell for at Algiers.^r This can be true only with respect to England. There are countries where a man is worth nothing; there are others where he is worth less than nothing.

18.—*Of the State and Number of People before the Romans*

Italy, Sicily, Asia Minor, Gaul, and Germany were nearly in the same state as Greece; full of small nations that abounded with inhabitants, they had no need of laws to increase their number.

19.—*Of the Depopulation of the Globe*

All these little republics were swallowed up in a large one, and the globe insensibly became depopulated: in order to be

^m "Repub." lib. V.

ⁿ Ibid.

^o "Polit." lib. VII. cap. xvi.

^p Ibid.

^q Ibid. lib. III. cap. iii.

^r Sixty pounds sterling.

convinced of this, we need only consider the state of Italy and Greece before and after the victories of the Romans.

"You will ask me," says Livy,^s "where the Volsci could find soldiers to support the war, after having been so often defeated. There must have been formerly an infinite number of people in those countries, which at present would be little better than a desert, were it not for a few soldiers and Roman slaves."

"The Oracles have ceased," says Plutarch, "because the places where they spoke are destroyed. At present we can scarcely find in Greece three thousand men fit to bear arms."

"I shall not describe," says Strabo,^t "Epirus and the adjacent places, because these countries are entirely deserted. This depopulation, which began long ago, still continues; so that the Roman soldiers encamp in the houses they have abandoned." We find the cause of this in Polybius, who says that Paulus Æmilius, after his victory, destroyed seventy cities of Epirus, and carried away a hundred and fifty thousand slaves.

20.—*That the Romans were under the Necessity of making Laws to encourage the Propagation of the Species*

The Romans, by destroying others, were themselves destroyed: incessantly in action, in the heat of battle, and in the most violent attempts, they wore out like a weapon kept constantly in use.

I shall not here speak of the attention with which they applied themselves to procure citizens in the room of those they lost,^u of the associations they entered into, the privileges they bestowed, and of that immense nursery of citizens, their slaves. I shall mention what they did to recruit the number, not of their citizens, but of their men; and as these were the people in the world who knew best how to adapt their laws to their projects, an examination of their conduct in this respect cannot be a matter of indifference.

21.—*Of the Laws of the Romans relating to the Propagation of the Species*

The ancient laws of Rome endeavored greatly to incite the citizens to marriage. The Senate and the people made frequent

^s Lib. VI.

^t Lib. VII. p. 496.

^u I have treated of this in the "Con-

siderations on the Causes of the Rise and Declension of the Roman Grandeur."

regulations on this subject, as Augustus says in his speech related by Dio.^v

Dionysius Halicarnassus ^w cannot believe that after the death of three hundred and five of the Fabii, exterminated by the Veientes, there remained no more of this family than one single child; because the ancient law, which obliged every citizen to marry and to educate all his children, was still in force.^x

Independently of the laws, the Censors had a particular eye upon marriages, and according to the exigencies of the republic engaged them to it by shame and by punishments.^y

The corruption of manners that began to take place contributed vastly to disgust the citizens with marriage, which was painful to those who had no taste for the pleasures of innocence. This is the purport of that speech which Metellus Numidicus, when he was censor, made to the people: ^z "If it were possible for us to do without wives, we should deliver ourselves from this evil: but as nature has ordained that we cannot live very happily with them, nor subsist without them, we ought to have more regard to our own preservation than to transient gratifications."

The corruption of manners destroyed the censorship, which was itself established to destroy the corruption of manners: for when this depravation became general, the Censor lost his power.^a

Civil discords, triumvirates, and proscriptions weakened Rome more than any war she had hitherto engaged in. They left but few citizens,^b and the greatest part of them unmarried. To remedy this last evil, Cæsar and Augustus re-established the censorship, and would even be censors themselves.^c Cæsar gave rewards to those who had many children.^d All women under forty-five years of age who had neither husband nor children were forbidden to wear jewels or to ride in litters; ^e an excellent method thus to attack celibacy by the power of vanity. The laws of Augustus were more pressing: ^f he imposed new penalties on such

^v Lib. LVI.

^w Lib. II.

^x In the year of Rome 277.

^y See what was done in this respect in T. Livy, lib. XLV.; the "Epitome" of T. Livy, lib. LIX.; Aulus Gellius, lib. I. cap. vi.; Valerius Maximus, lib. II. cap. xix.

^z It is in Aulus Gellius, lib. I. cap. vi.

^a See what I have said in book V. chap. xix.

^b Cæsar, after the Civil War, having

made a survey of the Roman citizens, found there were no more than one hundred and fifty thousand heads of families.—Florus's "Epitome of Livy," 17th decad.

^c See Dio, lib. XLIII., and Xiphilinus in "August."

^d Dio, lib. XLIII.; Suetonius, "Life of Cæsar," chap. xx.; Appian, lib. II. of the "Civil War."

^e Eusebius, in his "Chronicle."

^f Dio, lib. LIV.

numerous offspring was the first who received the fasces; *v* he had his choice of the provinces: *w* the Senator who had most children had his name written first in the catalogue of Senators, and was the first in giving his opinion in the Senate. *x* They might even stand sooner than ordinary for an office, because every child gave a dispensation of a year. *y* If an inhabitant of Rome had three children, he was exempted from all troublesome offices. *z* The free-born women who had three children, and the freed-women who had four, passed out of that perpetual tutelage *a* in which they had been held by the ancient laws of Rome. *b*

As they had rewards, they had also penalties. *c* Those who were not married could receive no advantage from the will of any person that was not a relative; *d* and those who, being married, had no children, could receive only half. *e* The Romans, says Plutarch, marry only to be heirs, and not to have them. *f*

The advantages which a man and his wife might receive from each other by will were limited by law. *g* If they had children of each other, they might receive the whole; if not, they could receive only a tenth part of the succession on the account of marriage; and if they had any children by a former venter, as many tenths as they had children.

If a husband absented himself from his wife on any other cause than the affairs of the republic, he could not inherit from her. *h*

The law gave to a surviving husband or wife two years to marry again, *i* and a year and a half in case of a divorce. The fathers who would not suffer their children to marry, or refused to give their daughters a portion, were obliged to do it by the magistrates. *j*

They were not allowed to betroth, when the marriage was to

v Aulus Gellius, lib. II. cap. xv.

w Tacitus, "Annal." lib. XV.

x See Law 6, sec. 5, "de Decurion."

y See Law 2 ff. "de minorib."

z Law 1st and 2d ff. "de vacatione et excusat. munerum."

a "Frag. of Ulpian," tit. 29, sec. 3.

b Plutarch, "Life of Numa."

c See the "Fragments of Ulpian," tit. 14, 15, 16, 17, and 18, which compose one of the most valuable pieces of the ancient civil law of the Romans.

d Sozom. lib. I. cap. ix. They could receive from their relatives.—"Frag. of Ulpian," tit. 16, sec. 1.

e Ibid.; and leg. unic. cod. Theod. "de Infirm. pœnis cœlib. et orbit."

f "Moral Works," "Of the love of Fathers towards their Children."

g See a more particular account of this in the "Frag. of Ulpian," tit. 15 and 16.

h Ibid. tit. 16, sec. 1.

i Ibid. tit. 14. It seems the first Julian laws allowed three years.—"Speech of Augustus," in Dio, lib. LVI.; Suetonius, "Life of Augustus," cap. xxxiv. Other Julian laws granted but one year: the Papian law gave two.—"Frag. of Ulpian," tit. 14. These laws were not agreeable to the people; Augustus, therefore, softened or strengthened them as they were more or less disposed to comply with them.

j This was the 35th head of the Papian law.—Leg. 19 ff. "de ritu nuptiarum."

be deferred for more than two years:^k and as they could not marry a girl till she was twelve years old, they could not be betrothed to her till she was ten. The law would not suffer them to trifle to no purpose;^l and under a pretence of being betrothed, to enjoy the privileges of married men.

It was contrary to law for a man of sixty to marry a woman of fifty.^m As they had given great privileges to married men, the law would not suffer them to enter into useless marriages. For the same reason, the Calvisian *senatus-consultum* declared the marriage of a woman above fifty with a man less than sixty to be unequal;ⁿ so that a woman of fifty years of age could not marry without incurring the penalties of these laws. Tiberius added to the rigor of the Papian law,^o and prohibited men of sixty from marrying women under fifty; so that a man of sixty could not marry in any case whatsoever, without incurring the penalty. But Claudius abrogated this law made under Tiberius.^p

All these regulations were more conformable to the climate of Italy than to that of the North, where a man of sixty years of age has still a considerable degree of strength, and where women of fifty are not always past child-bearing.

That they might not be unnecessarily limited in the choice they were to make, Augustus permitted all the free-born citizens who were not senators ^q to marry freed-women.^r The Papian law forbade the Senators marrying freed-women,^s or those who had been brought up to the stage; and from the time of Ulpian,^t free-born persons were forbidden to marry women who had led a disorderly life, who had played in the theatre, or who had been condemned by a public sentence. This must have been established by a decree of the Senate. During the time of the republic they had never made laws like these, because the Censors corrected this kind of disorders as soon as they arose, or else prevented their rising.

Constantine made a law ^u in which he comprehended, in the prohibition of the Papian law, not only the Senators, but even

^k See Dio, lib. LIV., anno 736; Suetonius, in "Octavio," cap. xxxiv.

^l Dio, lib. LIV.; and in the same Dio, the "Speech of Augustus," lib. LVI.

^m "Frag. of Ulpian," tit. 16, and the 27th law. cod. "de nuptiis."

ⁿ Ibid. tit. 16, sec. 3.

^o See Suetonius in "Claudio," cap. xxiii.

^p Ibid. "Life of Claudius," cap. xxiii., and the "Frag. of Ulpian," tit. 16, sec. 3; ^q Dio, lib. LIV.; "Frag. of Ulpian," tit. 13.

^r "Augustus's speech," in Dio, lib. LVI.

^s "Frag. of Ulpian," cap. xiii., and the 44th law ff. "de ritu nuptiarum."

^t Ibid. tit. 13 and 16.

^u See Law 1, in cod. "de natur. lib."

such as had a considerable rank in the state, without mentioning persons in an inferior station: this constituted the law of those times. These marriages were therefore no longer forbidden, except to the free-born comprehended in the law of Constantine. Justinian, however, abrogated the law of Constantine,^v and permitted all sorts of persons to contract these marriages; and thus we have acquired so fatal a liberty.

It is evident that the penalties inflicted on such as married contrary to the prohibition of the law were the same as those inflicted on persons who did not marry. These marriages did not give them any civil advantage; ^w for the dowry ^x was confiscated after the death of the wife.^y

Augustus having adjudged the succession and legacies of those whom these laws had declared incapable to the public treasury,^z they had the appearance rather of fiscal than of political and civil laws. The disgust they had already conceived at a burden which appeared too heavy was increased by their seeing themselves a continual prey to the avidity of the treasury. On this account, it became necessary, under Tiberius, that these laws should be softened; ^a that Nero should lessen the rewards given out of the treasury to the informers; ^b that Trajan should put a stop to their plundering; ^c that Severus should also moderate these laws; ^d and that the civilians should consider them as odious, and in all their decisions deviate from the literal rigor.

Besides, the emperors enervated these laws ^e by the privileges they granted of the rights of husbands, of children, and of three children. More than this, they gave particular persons a dispensation from the penalties of these laws.^f But the regulations established for the public utility seemed incapable of admitting an alleviation.

It was highly reasonable that they should grant the rights of

^v "Novell." 177.

^w Law 37 ff. "de operib. libertorum," sec. 7; "Frag. of Ulpian," tit. 16, sec. 2.

^x Frag. of Ulpian," tit. 16, sec. 2.

^y See book XXVI, chap. xiii.

^z Except in certain cases. See the "Frag. of Ulpian," tit. 18, and the only law in cod. "de Caduc. tollend."

^a "Relatum de moderanda Papiâ Populæ,"—Tacit. "Annal." lib. III, p. 117.

^b He reduced them to the fourth part.—Suetonius, in "Nerone," cap. x.

^c See Pliny's "Panegyric."

^d Severus extended even to twenty-

five years for the males, and to twenty for the females, the time fixed by the Papian law, as we see by comparing the "Frag. of Ulpian," tit. 16, with what Tertullian says, "Apol." cap. iv.

^e P. Scipio, the Censor, complains, in his speech to the people, of the abuses which were already introduced, that they received the same privileges for adopted as for natural children.—Aulus Gellius, lib. V. cap. xix.

^f See the 31st law ff. "de ritu nuptiarum."

children to the vestals,^g whom religion retained in a necessary virginity; they gave, in the same manner, the privilege of married men to soldiers,^h because they could not marry. It was customary to exempt the emperors from the constraint of certain civil laws. Thus Augustus was freed from the constraint of the law which limited the power of enfranchising,ⁱ and of that which set bounds to the right of bequeathing by testament.^j These were only particular cases; but, at last, dispensations were given without discretion, and the rule itself became no more than an exception.

The sects of philosophers had already introduced in the empire a disposition that estranged them from business—a disposition which could not gain ground in the time of the republic,^k when everybody was employed in the arts of war and peace. Hence arose an idea of perfection, as connected with a life of speculation; hence an estrangement from the cares and embarrassments of a family. The Christian religion coming after this philosophy fixed, if I may make use of the expression, the ideas which that had only prepared.

Christianity stamped its character on jurisprudence; for empire has ever a connection with the priesthood. This is visible from the Theodosian code, which is only a collection of the decrees of the Christian emperors.

A panegyrist of Constantine ^l said to that emperor, “Your laws were made only to correct vice and to regulate manners: you have stripped the ancient laws of that artifice which seemed to have no other aim than to lay snares for simplicity.”

It is certain that the alterations made by Constantine took their rise either from sentiments relating to the establishment of Christianity, or from ideas conceived of its perfection. From the first proceeded those laws which gave such authority to bishops, and which have been the foundation of the ecclesiastical jurisdiction; hence those laws which weakened paternal authority,^m by depriving the father of his property in the possessions of his children.

^g Augustus in the Papian law gave them the privilege of mothers. See Dio, lib. LXVI. Numa had granted them the ancient privilege of women who had three children; that is, of having no guardian.—Plutarch, “Life of Numa.”

^h This was granted them by Claudius.—Dio, lib. LX.

ⁱ Leg. apud eum, ff. “de manumissionib.” sec. 1.

^j Dio, lib. LV.

^k See, in Cicero’s “Offices,” his sentiments on the spirit of speculation.

^l Nazarius, “in panegyrico Constantini,” anno 321.

^m See Laws 1, 2, 3, in the Theodosian code “de bonis maternis,” “maternique generis,” etc., and the only law in the same code, “de bonis quæ filiis famil. acquiruntur.”

To extend a new religion, they were obliged to take away the dependence of children, who are always least attached to what is already established.

The laws made with a view to Christian perfection were more particularly those by which the penalties of the Papian laws were abolished;ⁿ the unmarried were equally exempted from them, with those who, being married, had no children.

"These laws were established," says an ecclesiastical historian,^o "as if the multiplication of the human species was an effect of our care; instead of being sensible that the number is increased or diminished, according to the order of Providence."

Principles of religion have had an extraordinary influence on the propagation of the human species. Sometimes they have promoted it, as among the Jews, the Mahommedans, the Gaurs, and the Chinese; at others they have put a damp to it, as was the case of the Romans upon their conversion to Christianity.

They everywhere incessantly preached continency; a virtue the more perfect because in its own nature it can be practised but by very few.

Constantine had not taken away the decimal laws which granted a greater extent to the donations between man and wife, in proportion to the number of their children. Theodosius, the younger, abrogated even these laws.^p

Justinian declared all those marriages valid which had been prohibited by the Papian laws.^q These laws require people to marry again: Justinian granted privileges to those who did not marry again.^r

By the ancient institutions, the natural right which everyone had to marry and beget children could not be taken away. Thus when they received a legacy,^s on condition of not marrying, or when a patron made his freed-man swear ^t that he would neither marry nor beget children, the Papian law annulled both the condition and the oath.^u The clauses on continuing in widowhood established among us contradict the ancient law, and descend from the constitutions of the emperors, founded on ideas of perfection.

ⁿ Leg. unic. cod. Theod. "de Infirm. pœn. cœlib. et orbit."

^o Sozomenus, p. 27.

^p Leg. 2 and 3, cod. Theod. "de jur. liber."

^q Leg. Sancimus, cod. "de nuptiis."

^r "Novell." 127, cap. iii.; "Novell." 118, cap. v.

^s Leg. 54 ff. "de condit. et demonstr."

^t Leg. 5, sec. 4, "de jure patronatus."

^u Paul, in his "Sentences," lib. III. tit. 4, sec. 15.

There is no law that contains an express abrogation of the privileges and honors which the Romans had granted to marriages, and to a number of children. But where celibacy had the pre-eminence, marriage could not be held in honor; and since they could oblige the officers of the public revenue to renounce so many advantages by the abolition of the penalties, it is easy to perceive that with yet greater ease they might put a stop to the rewards.

The same spiritual reason which had permitted celibacy soon imposed it even as necessary. God forbid that I should here speak against celibacy as adopted by religion; but who can be silent, when it is built on libertinism: when the two sexes, corrupting each other even by the natural sensations themselves, fly from a union which ought to make them better, to live in that which always renders them worse?

It is a rule drawn from nature, that the more the number of marriages is diminished, the more corrupt are those who have entered into that state; the fewer married men, the less fidelity is there in marriage; as when there are more thieves, more thefts are committed.

22.—*Of the Exposing of Children*

The Roman policy was very good in respect to the exposing of children. Romulus, says Dionysius Halicarnassus,^v laid the citizens under an obligation to educate all their male children, and the eldest of their daughters. If the infants were deformed and monstrous, he permitted the exposing them, after having shown them to five of their nearest neighbors.

Romulus did not suffer them to kill any infants under three years old: *w* by which means he reconciled the law that gave to fathers the right over their children of life and death with that which prohibited their being exposed.

We find also in Dionysius Halicarnassus *x* that the law which obliged the citizens to marry, and to educate all their children, was in force in the 277th year of Rome; we see that custom had restrained the law of Romulus which permitted them to expose their younger daughters.

We have no knowledge of what the law of the Twelve Tables (made in the year of Rome 301) appointed with respect to the ex-

^v "Antiquities of Rome," lib. II.

^w Ibid.

^x Lib. IX.

24.—*The Changes which happened in Europe with regard to the Number of the Inhabitants*

In the state Europe was in one would not imagine it possible for it to be retrieved, especially when under Charlemagne it formed only one vast empire. But by the nature of government at that time it became divided into an infinite number of petty sovereignties, and as the lord or sovereign, who resided in his village or city, was neither great, rich, powerful, nor even safe but by the number of his subjects, everyone employed himself with a singular attention to make his little country flourish. This succeeded in such a manner that notwithstanding the irregularities of government, the want of that knowledge which has since been acquired in commerce, and the numerous wars and disorders incessantly arising, most countries of Europe were better peopled in those days than they are even at present.

I have not time to treat fully of this subject, but I shall cite the prodigious armies engaged in the crusades, composed of men of all countries. Puffendorf says that in the reign of Charles IX there were in France twenty millions of men.^b

It is the perpetual reunion of many little states that has produced this diminution. Formerly, every village of France was a capital; there is at present only one large one. Every part of the state was a centre of power; at present all has a relation to one centre, and this centre is in some measure the state itself.

25.—*The same Subject continued*

Europe, it is true, has for these two ages past greatly increased its navigation; this has both procured and deprived it of inhabitants. Holland sends every year a great number of mariners to the Indies, of whom not above two-thirds return; the rest either perish or settle in the Indies. The same thing must happen to every other nation concerned in that trade.

We must not judge of Europe as of a particular state engaged alone in an extensive navigation. This state would increase in people, because all the neighboring nations would endeavor to have a share in this commerce, and mariners would arrive from

^b "Introduction to the History of Europe," chap. v. of France. This is obviously a numerical blunder, since, according to the Census of 1751, and

France was never so populous as at that time, she did not possess twenty millions.—Voltaire.

hospitals." ^c He ought to have said, I will begin by rendering my empire rich, and then I will build hospitals.

The riches of the state suppose great industry. Among numerous branches of trade it is impossible but that some must suffer, and consequently the mechanics must be in a momentary necessity.

Whenever this happens, the state is obliged to lend them ready assistance, whether it be to prevent the sufferings of the people, or to avoid a rebellion. In this case hospitals, or equivalent regulations, are necessary to prevent this misery.

But when the nation is poor, private poverty springs from general calamity, and is, if I may so express myself, the calamity itself. All the hospitals in the world cannot cure private poverty; on the contrary, the spirit of indolence, which it constantly inspires, increases the general and consequently the private misery.

Henry VIII,^f resolving to reform the Church of England, ruined the monks, of themselves a lazy set of people, thereby encouraged laziness in others, because, as they practised hospitalities, they supported an infinite number of idle persons, gentlemen and citizens, who spent their lives in running from convent to convent. He demolished even the hospitals, in which the lower people found subsistence, as the gentlemen did theirs in the monasteries. Since these changes, the spirit of trade and industry has been established in England.

At Rome, the hospitals place everyone at his ease except those who labor, except those who are industrious, except those who have land, except those who are engaged in trade.

I have observed that wealthy nations have need of hospitals, because fortune subjects them to a thousand accidents; but I explain that transient assistances are much better than permanent foundations. The evil is momentary; it is necessary, therefore, that the succor should be of the same nature, and that it be applied to particular accidents.

^c See Sir John Chardin's "Travels through Persia," vol. viii.

^f See Burnet's "History of the Reformation."

BOOK XXIV

OF LAWS IN RELATION TO RELIGION CONSIDERED IN ITSELF, AND IN ITS DOCTRINES

1.—*Of Religion in General*

AS amidst several degrees of darkness we may form a judgment of those which are the least thick, and among precipices which are the least deep, so we may search among false religions for those that are most conformable to the welfare of society; for those which, though they have not the effect of leading men to the felicity of another life, may contribute most to their happiness in this.

I shall examine, therefore, the several religions of the world, in relation only to the good they produce in civil society, whether I speak of that which has its root in heaven, or of those which spring from the earth.

As in this work I am not a divine but a political writer, I may here advance things which are not otherwise true, than as they correspond with a worldly manner of thinking, not as considered in their relation to truths of a more sublime nature.

With regard to the true religion, a person of the least degree of impartiality must see that I have never pretended to make its interests submit to those of a political nature, but rather to unite them; now, in order to unite, it is necessary that we should know them.

The Christian religion, which ordains that men should love each other, would, without doubt, have every nation blest with the best civil, the best political laws; because these, next to this religion, are the greatest good that men can give and receive.

2.—*A Paradox of Mr. Bayle's*

Mr. Bayle has pretended to prove ^a that it is better to be an atheist than an idolater; that is, in other words, that it is less

^a "Thoughts on the Comet."

them with guilt; and others whom they besought to shield them from it.

3.—*That a moderate Government is most agreeable to the Christian Religion, and a despotic Government to the Mahommedan*

The Christian religion is a stranger to mere despotic power. The mildness so frequently recommended in the gospel is incompatible with the despotic rage with which a prince punishes his subjects, and exercises himself in cruelty.

As this religion forbids the plurality of wives, its princes are less confined, less concealed from their subjects, and consequently have more humanity: they are more disposed to be directed by laws, and more capable of perceiving that they cannot do whatever they please.

While the Mahommedan princes incessantly give or receive death, the religion of the Christians renders their princes less timid, and consequently less cruel. The prince confides in his subjects, and the subjects in the prince. How admirable the religion which, while it only seems to have in view the felicity of the other life, continues the happiness of this!

It is the Christian religion that, in spite of the extent of the empire and the influence of the climate, has hindered despotic power from being established in Ethiopia, and has carried into the heart of Africa the manners and laws of Europe.

The heir to the Empire of Ethiopia ^b enjoys a principality and gives to other subjects an example of love and obedience. Not far thence may we see the Mahommedan shutting up the children of the King of Sennar, at whose death the Council sends to murder them, in favor of the prince who mounts the throne.

Let us set before our eyes, on the one hand, the continual massacres of the kings and generals of the Greeks and Romans, and, on the other, the destruction of people and cities by those famous conquerors Timur Beg and Jenghiz Khan, who ravaged Asia, and we shall see that we owe to Christianity, in government, a certain political law; and in war, a certain law of nations—benefits which human nature can never sufficiently acknowledge.

^b "Description of Ethiopia," by M. Ponce, Physician. "Collection of Edifying Letters."

It is owing to this law of nations that among us victory leaves these great advantages to the conquered, life, liberty, laws, wealth, and always religion, when the conqueror is not blind to his own interest.

We may truly say that the people of Europe are not at present more disunited than the people and the armies, or even the armies among themselves were, under the Roman Empire when it had become a despotic and military government. On the one hand, the armies engaged in war against each other, and, on the other, they pillaged the cities, and divided or confiscated the lands.

4.—*Consequences from the Character of the Christian Religion, and that of the Mahommedan*

From the characters of the Christian and Mahommedan religions, we ought, without any further examination, to embrace the one and reject the other: for it is much easier to prove that religion ought to humanize the manners of men than that any particular religion is true.

It is a misfortune to human nature when religion is given by a conqueror. The Mahommedan religion, which speaks only by the sword, acts still upon men with that destructive spirit with which it was founded.

The history of Sabbaco,^c one of the pastoral kings of Egypt, is very extraordinary. The tutelar god of Thebes, appearing to him in a dream, ordered him to put to death all the priests of Egypt. He judged that the gods were displeased at his being on the throne, since they commanded him to commit an action contrary to their ordinary pleasure; and, therefore, he retired into Ethiopia.

5.—*That the Catholic Religion is most agreeable to a Monarchy, and the Protestant to a Republic*

When a religion is introduced and fixed in a state, it is commonly such as is most suitable to the plan of government there established; for those who receive it, and those who are the cause of its being received, have scarcely any other idea of policy than that of the state in which they were born.

When the Christian religion, two centuries ago, became un-

^c See "Diodorus," lib. II.

happily divided into Catholic and Protestant, the people of the North embraced the Protestant, and those of the South adhered still to the Catholic.

The reason is plain: the people of the north have, and will forever have, a spirit of liberty and independence, which the people of the south have not; and, therefore, a religion which has no visible head is more agreeable to the independence of the climate than that which has one.

In the countries themselves where the Protestant religion became established, the revolutions were made pursuant to the several plans of political government. Luther having great princes on his side would never have been able to make them relish an ecclesiastical authority that had no exterior pre-eminence; while Calvin, having to do with people who lived under republican governments, or with obscure citizens in monarchies, might very well avoid establishing dignities and preferments.

Each of these two religions was believed to be perfect; the Calvinist judging his most conformable to what Christ had said, and the Lutheran to what the Apostles had practised.

6.—*Another of Mr. Bayle's Paradoxes*

Mr. Bayle, after having abused all religions, endeavors to sully Christianity: he boldly asserts that true Christians cannot form a government of any duration. Why not? Citizens of this profession being infinitely enlightened with respect to the various duties of life, and having the warmest zeal to fulfil them, must be perfectly sensible of the rights of natural defence. The more they believe themselves indebted to religion, the more they would think due to their country. The principles of Christianity, deeply engraved on the heart, would be infinitely more powerful than the false honor of monarchies, than the humane virtues of republics, or the servile fear of despotic states.

It is astonishing that this great man should not be able to distinguish between the orders for the establishment of Christianity and Christianity itself; and that he should be liable to be charged with not knowing the spirit of his own religion. When the legislator, instead of laws, has given counsels, this is

because he knew that if these counsels were ordained as laws they would be contrary to the spirit of the laws themselves.

7.—*Of the Laws of Perfection in Religion*

Human laws, made to direct the will, ought to give precepts, and not counsels; religion, made to influence the heart, should give many counsels, and few precepts.

When, for instance, it gives rules, not for what is good, but for what is better; not to direct to what is right, but to what is perfect; it is expedient that these should be counsels, and not laws: for perfection can have no relation to the universality of men or things. Besides, if these were laws, there would be a necessity for an infinite number of others, to make people observe the first. Celibacy was advised by Christianity; when they made it a law in respect to a certain order of men, it became necessary to make new ones every day, in order to oblige those men to observe it.^d The legislator wearied himself, and he wearied society, to make men execute by precept what those who love perfection would have executed as counsel.

8.—*Of the Connection between the moral Laws and those of Religion*

In a country so unfortunate as to have a religion that God has not revealed, it is necessary for it to be agreeable to morality; because even a false religion is the best security we can have of the probity of men.

The principal points of religion of the inhabitants of Pegu^e are not to commit murder, not to steal, to avoid uncleanness, not to give the least uneasiness to their neighbor, but to do him, on the contrary, all the good in their power. With these rules they think they should be saved in any religion whatsoever. Hence it proceeds that those people, though poor and proud, behave with gentleness and compassion to the unhappy.

9.—*Of the Essenes*

The Essenes^f made a vow to observe justice to mankind, to do no ill to any person, upon whatsoever account, to keep faith with all the world, to hate injustice, to command with

^d Dupin's "Ecclesiastical Library of the 6th century," vol. v.

^e "Collection of Voyages that con-

tributed to the establishment of the East India Company," vol. iii. part I. p. 36.

^f "History of the Jews," by Prideaux.

modesty, always to side with truth, and to fly from all unlawful gain.

10.—*Of the Sect of Stoics*

The several sects of philosophy among the ancients were a species of religion. Never were any principles more worthy of human nature, and more proper to form the good man, than those of the Stoics; and if I could for a moment cease to think that I am a Christian, I should not be able to hinder myself from ranking the destruction of the sect of Zeno among the misfortunes that have befallen the human race.

It carried to excess only those things in which there is true greatness—the contempt of pleasure and of pain.

It was this sect alone that made citizens; this alone that made great men; this alone great emperors.

Laying aside for a moment revealed truths, let us search through all nature, and we shall not find a nobler object than the Antoninuses; even Julian himself—Julian (a commendation thus wrested from me will not render me an accomplice of his apostasy)—no, there has not been a prince since his reign more worthy to govern mankind.

While the Stoics looked upon riches, human grandeur, grief, disquietudes, and pleasures as vanity, they were entirely employed in laboring for the happiness of mankind, and in exercising the duties of society. It seems as if they regarded that sacred spirit, which they believed to dwell within them, as a kind of favorable providence watchful over the human race.

Born for society, they all believed that it was their destiny to labor for it; with so much the less fatigue, their rewards were all within themselves. Happy by their philosophy alone, it seemed as if only the happiness of others could increase theirs.

11.—*Of Contemplation*

Men being made to preserve, to nourish, to clothe themselves, and do all the actions of society, religion ought not to give them too contemplative a life.^g

The Mahommedans become speculative by habit; they pray five times a day, and each time they are obliged to cast behind them everything which has any concern with this world: this

^g This is the inconvenience of the doctrine of Foe and Laockium.

forms them for speculation. Add to this that indifference for all things which is inspired by the doctrine of unalterable fate.

If other causes besides these concur to disengage their affections; for instance, if the severity of the government, if the laws concerning the property of land, give them a precarious spirit—all is lost.

The religion of the Gaurs formerly rendered Persia a flourishing kingdom; it corrected the bad effects of despotic power. The same empire is now destroyed by the Mahommedan religion.

12.—*Of Penances*

Penances ought to be joined with the idea of labor, not with that of idleness; with the idea of good, not with that of supereminence; with the idea of frugality, not with that of avarice.

13.—*Of inexpressible Crimes*

It appears from a passage of the books of the pontiffs, quoted by Cicero,^h that they had among the Romans inexpressible crimes:ⁱ and it is on this that Zozyms founds the narration so proper to blacken the motives of Constantine's conversion; and Julian, that bitter raillery on this conversion in his *Cæsars*.

The Pagan religion, indeed, which prohibited only some of the grosser crimes, and which stopped the hand but meddled not with the heart, might have crimes that were inexpressible; but a religion which bridles all the passions; which is not more jealous of actions than of thoughts and desires; which holds us not by a few chains but by an infinite number of threads; which, leaving human justice aside, establishes another kind of justice; which is so ordered as to lead us continually from repentance to love, and from love to repentance; which puts between the judge and the criminal a greater mediator, between the just and the mediator a great judge—a religion like this ought not to have inexpressible crimes. But while it gives fear and hope to all, it makes us sufficiently sensible that though there is no crime in its own nature inexpressible, yet a whole criminal life may be so; that it is extremely dangerous to affront mercy by new crimes and new expiations; that an

^h Lib. II. of "Laws."

ⁱ "Sacrum commissum, quod neque expiari poterit, impie commissum est; quod expiari poterit pœblici sacerdotes expianto."

uneasiness on account of ancient debts, from which we are never entirely free, ought to make us afraid of contracting new ones, of filling up the measure, and going even to that point where paternal goodness is limited.

14.—*In what Manner Religion has an Influence on Civil Laws*

As both religion and the civil laws ought to have a peculiar tendency to render men good citizens, it is evident that when one of these deviates from this end, the tendency of the other ought to be strengthened. The less severity there is in religion, the more there ought to be in the civil laws.

Thus the reigning religion of Japan having few doctrines, and proposing neither future rewards nor punishments, the laws to supply these defects have been made with the spirit of severity, and are executed with an extraordinary punctuality.

When the doctrine of necessity is established by religion, the penalties of the laws ought to be more severe, and the magistrate more vigilant; to the end that men who would otherwise become abandoned might be determined by these motives; but it is quite otherwise where religion has established the doctrine of liberty.

From the inactivity of the soul springs the Mahommedan doctrine of predestination, and from this doctrine of predestination springs the inactivity of the soul. This, they say, is in the decrees of God; they must, therefore, indulge their repose. In a case like this the magistrate ought to waken by the laws those who are lulled asleep by religion.

When religion condemns things which the civil laws ought to permit, there is danger lest the civil laws, on the other hand, should permit what religion ought to condemn. Either of these is a constant proof of a want of true ideas of that harmony and proportion which ought to subsist between both.

Thus the Tartars under Jenghiz Khan,^j among whom it was a sin and even a capital crime to put a knife in the fire, to lean against a whip, to strike a horse with the bridle, to break one bone with another, did not believe it to be any sin to break their word, to seize upon another man's goods, to do an injury to a person, or to commit murder. In a word, laws which ren-

^j See the relation written by John Duplan Carpin, sent to Tartary by Pope Innocent IV in the year 1246.

der that necessary which is only indifferent have this inconvenience, that they make those things indifferent which are absolutely necessary.

The people of Formosa believe ^k that there is a kind of hell, but it is to punish those who at certain seasons have not gone naked, who have dressed in calico and not in silk, who have presumed to look for oysters, or who have undertaken any business without consulting the song of birds; whilst drunkenness and debauchery are not regarded as crimes. They believe even that the debauches of their children are agreeable to their gods.

When religion absolves the mind by a thing merely accidental, it loses its greatest influence on mankind. The people of India believe that the waters of the Ganges have a sanctifying virtue.^l Those who die on its banks are imagined to be exempted from the torments of the other life, and to be entitled to dwell in a region full of delights; and for this reason the ashes of the dead are sent from the most distant places to be thrown into this river. Little then does it signify whether they had lived virtuously or not, so they be but thrown into the Ganges.

The idea of a place of rewards has a necessary connection with the idea of the abodes of misery; and when they hope for the former without fearing the latter, the civil laws have no longer any influence. Men who think themselves sure of the rewards of the other life are above the power of the legislator; they look upon death with too much contempt. How shall the man be restrained by laws who believes that the greatest pain the magistrate can inflict will end in a moment to begin his happiness?

15.—*How false Religions are sometimes corrected by the Civil Laws*

Simplicity, superstition, or a respect for antiquity have sometimes established mysteries or ceremonies shocking to modesty: of this the world has furnished numerous examples. Aristotle says ^m that in this case the law permits the fathers of families to repair to the temple to celebrate these mysteries for

^k "Collection of Voyages that Contributed to the establishment of the East India Company," vol. v. p. 192.

^l "Edifying Letters," collect. 15.
^m "Polit." lib. VII. cap. xvii.

their wives and children. How admirable the civil law which in spite of religion preserves the manners untainted!

Augustusⁿ excluded the youth of either sex from assisting at any nocturnal ceremony, unless accompanied by a more aged relative; and when he revived the Lupercalia, he would not allow the young men to run naked.

16.—*How the Laws of Religion correct the Inconveniences of a political Constitution*

On the other hand, religion may support a state when the laws themselves are incapable of doing it.

Thus when a kingdom is frequently agitated by civil wars, religion may do much by obliging one part of the state to remain always quiet. Among the Greeks, the Eleans, as priests of Apollo, lived always in peace. In Japan,^o the city of Meaco enjoys a constant peace, as being a holy city. Religion supports this regulation, and that empire, which seems to be alone upon earth, and which neither has nor will have any dependence on foreigners, has always in its own bosom a trade which war cannot ruin.

In kingdoms where wars are not entered upon by a general consent, and where the laws have not pointed out any means either of terminating or preventing them, religion establishes times of peace, or cessation from hostilities, that the people may be able to sow their corn and perform those other labors which are absolutely necessary for the subsistence of the state.

Every year all hostility ceases between the Arabian tribes for four months: the least disturbance would then be an impiety.^p In former times, when every lord in France declared war or peace, religion granted a truce, which was to take place at certain seasons.

17.—*The same Subject continued*

When a state has many causes for hatred, religion ought to produce many ways of reconciliation. The Arabs, a people addicted to robbery, are frequently guilty of doing injury and injustice. Mahomet enacted this law: *q* "If any one forgives

ⁿ Suetonius, in "Augusto," cap. xxxi.
^o "Collection of Voyages made to establish an India Company," vol. iv. p. 127.

^p See Prideaux, "Life of Mahomet," p. 64.
^q Koran, book I., chapter "of the Cow."

the principles of society; and on the contrary, doctrines the most false may be attended with excellent consequences, when contrived so as to be connected with these principles.

The religion of Confucius disowns the immortality of the soul: and the sect of Zeno did not believe it. These two sects have drawn from their bad principles consequences, not just indeed, but most admirable as to their influence on society. Those of the religion of Tao, and of Foe,^c believe the immortality of the soul; but from this sacred doctrine they draw the most frightful consequences.

The doctrine of the immortality of the soul falsely understood has, almost in every part of the globe and in every age, engaged women, slaves, subjects, friends, to murder themselves, that they might go and serve in the other world the object of their respect or love in this. Thus it was in the West Indies; thus it was among the Danes;^d thus it is at present in Japan,^e in Macassar,^f and many other places.

These customs do not so directly proceed from the doctrine of the immortality of the soul as from that of the resurrection of the body, whence they have drawn this consequence, that after death the same individual will have the same wants, the same sentiments, the same passions. In this point of view, the doctrine of the immortality of the soul has a prodigious effect on mankind; because the idea of only a simple change of habitation is more within the reach of the human understanding, and more adapted to flatter the heart, than the idea of a new modification.

It is not enough for religion to establish a doctrine; it must also direct its influence. This the Christian religion performs in the most admirable manner, particularly with regard to the doctrines of which we have been speaking. It makes us hope for a state, which is the object of our belief; not for a state

^c A Chinese philosopher reasons thus against the doctrine of Foe: "It is said, in a book of that sect, that the body is our dwelling-place and the soul the immortal guest which lodges there; but if the bodies of our relatives are only a lodging, it is natural to regard them with the same contempt we should feel for a structure of earth and dirt. Is not this endeavoring to tear from the heart the virtue of love to one's own parents? This leads us even to neglect the care of the body, and to refuse it the com-

passion and affection so necessary for its preservation; hence the disciples of Foe kill themselves by thousands."—"Work of an ancient Chinese philosopher," in the Collection of Du Halde, vol. iii. p. 52.

^d See Tho. Bartholin's "Antiquities of the Danes."

^e "An Account of Japan," in the "Collection of Voyages that contributed to establish an East India Company."

^f Forbin's "Memoirs."

which we have already experienced or known: thus every article, even the resurrection of the body, leads us to spiritual ideas.

20.—*The same Subject continued*

The sacred books *g* of the ancient Persians say, "If you would be holy instruct your children, because all the good actions which they perform will be imputed to you." They advise them to marry betimes, because children at the day of judgment will be as a bridge, over which those who have none cannot pass. These doctrines were false, but extremely useful.

21.—*Of the Metempsychosis*

The doctrine of the immortality of the soul is divided into three branches—that of pure immortality, that of a simple change of habitation, and that of a metempsychosis, that is, the system of the Christians, that of the Scythians, and that of the Indians. We have just been speaking of the first two, and I shall say of the last, that as it has been well or ill explained, it has had good or bad effects. As it inspires men with a certain horror against bloodshed, very few murders are committed in the Indies; and though they seldom punish with death, yet they enjoy a perfect tranquillity.

On the other hand, women burn themselves at the death of their husbands; thus it is only the innocent who suffer a violent death.

22.—*That it is dangerous for Religion to inspire an Aversion for Things in themselves indifferent*

A kind of honor established in the Indies by the prejudices of religion has made the several tribes conceive an aversion against each other. This honor is founded entirely on religion; these family distinctions form no civil distinctions; there are Indians who would think themselves dishonored by eating with their king.

These sorts of distinctions are connected with a certain aversion for other men, very different from those sentiments which naturally arise from difference of rank; which among us comprehends a love for inferiors.

The laws of religion should never inspire an aversion to anything but vice, and above all they should never estrange man from a love and tenderness for his own species.

The Mahommedan and Indian religions embrace an infinite number of people; the Indians hate the Mahommedans, because they eat cows; the Mahommedans detest the Indians because they eat hogs.

23.—Of Festivals

When religion appoints a cessation from labor it ought to have greater regard to the necessities of mankind than to the grandeur of the being it designs to honor.

Athens was subject to great inconveniences from the excessive number of its festivals.^h These powerful people, to whose decision all the cities of Greece came to submit their quarrels, could not have time to despatch such a multiplicity of affairs.

When Constantine ordained that the people should rest on the Sabbath, he made this decree for the cities,ⁱ and not for the inhabitants of the open country; he was sensible that labor in the cities was useful, but in the fields necessary.

For the same reason, in a country supported by commerce, the number of festivals ought to be relative to this very commerce. Protestant and Catholic countries are situated in such a manner that there is more need of labor in the former than in the latter;^j the suppression of festivals is, therefore, more suitable to Protestant than to Catholic countries.

Dampier observes that the diversions of different nations vary greatly, according to the climate.^k As hot climates produce a quantity of delicate fruits, the barbarians easily find necessaries, and, therefore, spend much time in diversions. The Indians of colder countries have not so much leisure, being obliged to fish and hunt continually; hence they have less music, dancing, and festivals. If a new religion should be established among these people, it ought to have regard to this in the institution of festivals.

^h Xenophon "on the Republic of Athens."

ⁱ Leg. 3, cod. "de Feriis." This law was doubtless made only for the Pagans.

^j The Catholics lie more towards the south, and the Protestants towards the north.

^k Dampier's "Voyages," vol. ii.

24.—*Of the local Laws of Religion*

There are many local laws in various religions; and when Montezuma with so much obstinacy insisted that the religion of the Spaniards was good for their country, and his for Mexico, he did not assert an absurdity; because, in fact, legislators could never help having a regard to what nature had established before them.

The opinion of the metempsychosis is adapted to the climate of the Indies. An excessive heat burns up all the country:^l they can breed but very few cattle; they are always in danger of wanting them for tillage; their black cattle multiply but indifferently;^m and they are subject to many distempers. A law of religion which preserves them is, therefore, more suitable to the policy of the country.

While the meadows are scorched, rice and pulse, by the assistance of water, are brought to perfection; a law of religion which permits only this kind of nourishment must, therefore, be extremely useful to men in those climates.

The flesh of cattle in that country is insipid,ⁿ but the milk and butter which they receive from them serve for a part of their subsistence; therefore, the law which prohibits the eating and killing of cows is in the Indies not unreasonable.

Athens contained a prodigious multitude of people, but its territory was barren. It was, therefore, a religious maxim with this people, that those who offered some small presents to the gods honored them more than those who sacrificed an ox.^o

25.—*The Inconvenience of transplanting a Religion from one Country to another*

It follows hence that there are frequently many inconveniences attending the transplanting a religion from one country to any other.

"The hog," says Mr. de Boulainvilliers,^p "must be very scarce in Arabia, where there are almost no woods, and hardly anything fit for the nourishment of these animals; besides, the saltness of the water and food renders the people most susceptible of cutaneous disorders." This local law could not be

^l See Bernier's "Travels," vol. ii. p. 137.

^m "Edifying Letters," Col. 12, p. 95.

ⁿ Bernier's "Travels," vol. ii. p. 187.

^o Euripides, in "Athenicus," lib. 11.

^p "Life of Mahomet."

good in other countries,^q where the hog is almost a universal, and in some sort a necessary, nourishment.

I shall here make a reflection. Sanctorius has observed that pork transpires but little,^r and that this kind of meat greatly hinders the transpiration of other food; he has found that this diminution amounts to a third.^s Besides, it is known that the want of transpiration forms or increases the disorders of the skin. The feeding on pork ought rather to be prohibited in climates where the people are subject to these disorders, as in Palestine, Arabia, Egypt, and Libya.

26.—*The same Subject continued*

Sir John Chardin says^t that there is not a navigable river in Persia, except the Kur, which is at the extremity of the empire. The ancient law of the Gaurs which prohibited sailing on rivers was not, therefore, attended with any inconvenience in this country, though it would have ruined the trade of another.

Frequent bathings are extremely useful in hot climates. On this account they are ordained in the Mahommedan law and in the Indian religion. In the Indies it is a most meritorious act to pray to God in the running stream;^u but how could these things be performed in other climates?

When a religion adapted to the climate of one country clashes too much with the climate of another it cannot be there established; and whenever it has been introduced it has been afterwards discarded. It seems to all human appearance as if the climate had prescribed the bounds of the Christian and the Mahommedan religions.

It follows hence, that it is almost always proper for a religion to have particular doctrines, and a general worship. In laws concerning the practice of religious worship there ought to be but few particulars; for instance, they should command mortification in general and not a certain kind of mortification. Christianity is full of good sense; abstinence is of divine institution; but a particular kind of abstinence is ordained by human authority, and, therefore, may be changed.

^q As in China.

^r "Medicina Statica," sect. 3, aphor. 23.

^s Ibid.

^t "Travels into Persia," vol. ii.

^u Bernier's "Travels," vol. ii.

BOOK XXV

OF LAWS IN RELATION TO THE ESTABLISHMENT OF RELIGION AND ITS EXTERNAL POLITY

1.—*Of Religious Sentiments*

THE pious man and the atheist always talk of religion; the one speaks of what he loves, and the other of what he fears.

2.—*Of the Motives of Attachment to different Religions*

The different religions of the world do not give to those who profess them equal motives of attachment; this depends greatly on the manner in which they agree with the turn of thought and perceptions of mankind.

We are extremely addicted to idolatry, and yet have no great inclination for the religion of idolaters; we are not very fond of spiritual ideas, and yet are most attached to those religions which teach us to adore a spiritual being. This proceeds from the satisfaction we find in ourselves at having been so intelligent as to choose a religion which raises the deity from that baseness in which he had been placed by others. We look upon idolatry as the religion of an ignorant people, and the religion which has a spiritual being for its object as that of the most enlightened nations.

When with a doctrine that gives us the idea of a spiritual supreme being we can still join those of a sensible nature and admit them into our worship, we contract a greater attachment to religion; because those motives which we have just mentioned are added to our natural inclinations for the objects of sense. Thus the Catholics, who have more of this kind of worship than the Protestants, are more attached to their religion than the Protestants are to theirs, and more zealous for its propagation.

When the people of Ephesus were informed that the fathers of the council had declared they might call the Virgin Mary the Mother of God, they were transported with joy, they kissed the hands of the bishops, they embraced their knees, and the whole city resounded with acclamations.^a

When an intellectual religion superadds a choice made by the deity, and a preference for those who profess it over those who do not, this greatly attaches us to religion. The Mahommedans would not be such good Mussulmans if, on the one hand, there were not idolatrous nations who make them imagine themselves the champions of the unity of God; and on the other Christians, to make them believe that they are the objects of his preference.

A religion burdened with many ceremonies ^b attaches us to it more strongly than that which has a fewer number. We have an extreme propensity to things in which we are continually employed: witness the obstinate prejudices of the Mahommedans and the Jews,^c and the readiness with which barbarous and savage nations change their religion, who, as they are employed entirely in hunting or war, have but few religious ceremonies.

Men are extremely inclined to the passions of hope and fear; a religion, therefore, that had neither a heaven nor a hell, could hardly please them. This is proved by the ease with which foreign religions have been established in Japan, and the zeal and fondness with which they were received.^d

In order to raise an attachment to religion it is necessary that it should inculcate pure morals. Men who are knaves by retail are extremely honest in the gross; they love morality. And were I not treating of so grave a subject I should say that this appears remarkably evident in our theatres: we are sure of pleasing the people by sentiments avowed by morality; we are sure of shocking them by those it disapproves.

When external worship is attended with great magnificence

^a St. Cyril's "Letter."

^b This does not contradict what I have said in the last chapter of the preceding book: I here speak of the motives of attachment of religion, and there of the means of rendering it more general.

^c This has been remarked all over the world. See, as to the Turks, the "Missions of the Levant"; the "Collection

of Voyages that contributed to the establishment of an East India Company," vol. iii. p. 201, on the Moors of Bavaria; and Father Labat on the "Mahommedan Negroes," etc.

^d The Christian and the Indian religions: these have a hell and a paradise, which the religion of Sintos has not.

their city and the presence of men, seemed to have no houses but the temples, nor other protectors than the gods.

At first these were only designed for involuntary homicides; but when the people made them a sanctuary for those who had committed great crimes they fell into a gross contradiction. If they had offended men they had much greater reason to believe they had offended the gods.

These asylums multiplied in Greece. The temples, says Tacitus,ⁱ were filled with insolvent debtors and wicked slaves; the magistrate found it difficult to exercise his office; the people protected the crimes of men as the ceremonies of the gods; at length the Senate was obliged to retrench a great number of them.

The laws of Moses were perfectly wise. The man who involuntarily killed another was innocent; but he was obliged to be taken away from before the eyes of the relatives of the deceased. Moses, therefore, appointed an asylum for such unfortunate people.^j The perpetrators of great crimes deserved not a place of safety, and they had none:^k the Jews had only a portable tabernacle, which continually changed its place; this excluded the idea of a sanctuary. It is true that they had afterwards a temple; but the criminals who would resort thither from all parts might disturb the divine service. If persons who had committed manslaughter had been driven out of the country, as was customary among the Greeks, they had reason to fear that they would worship strange gods. All these considerations made them establish cities of safety, where they might stay till the death of the high-priest.

4.—Of the Ministers of Religion

The first men, says Porphyry,^l sacrificed only vegetables. In a worship so simple every one might be priest in his own family.

The natural desire of pleasing the deity multiplied ceremonies. Hence it followed, that men employed in agriculture became incapable of observing them all and of filling up the number.

Particular places were consecrated to the gods; it then be-

ⁱ "Annal." lib. II.
^j Numb. xxxv.

^k Ibid.
^l "De Abstinencia animal." II. 5.

5.—*Of the Bounds which the Laws ought to prescribe to the Riches of the Clergy*

As particular families may be extinct, their wealth cannot be a perpetual inheritance. The clergy is a family which cannot be extinct; wealth is, therefore, fixed to it forever, and cannot go out of it.

Particular families may increase; it is necessary then that their wealth should also increase. The clergy is a family which ought not to increase; their wealth ought then to be limited.

We have retained the regulations of the Levitical laws as to the possessions of the clergy, except those relating to the bounds of these possessions; indeed, among us we must ever be ignorant of the limit beyond which any religious community can no longer be permitted to acquire.

These endless acquisitions appear to the people so unreasonable that he who should speak in their defence would be regarded as an idiot.

The civil laws find sometimes many difficulties in altering established abuses, because they are connected with things worthy of respect; in this case an indirect proceeding would be a greater proof of the wisdom of the legislator than another which struck directly at the thing itself. Instead of prohibiting the acquisitions of the clergy we should seek to give them a distaste for them; to leave them the right and to take away the deed.

In some countries of Europe, a respect for the privileges of the nobility has established in their favor a right of indemnity over immovable goods acquired in mortmain. The interest of the prince has in the same case made him exact a right of amortization. In Castile, where no such right prevails, the clergy have seized upon everything. In Aragon, where there is some right of amortization, they have obtained less; in France, where this right and that of indemnity are established, they have acquired less still; and it may be said that the prosperity of this kingdom is in a great measure owing to the exercise of these two rights. If possible, then, increase these rights, and put a stop to the mortmain.

Render the ancient and necessary patrimony of the clergy

sacred and inviolable, let it be fixed and eternal like that body itself, but let new inheritances be out of their power.

Permit them to break the rule when the rule has become an abuse; suffer the abuse when it enters into the rule.

They still remember in Rome a certain memorial sent thither on some disputes with the clergy, in which was this maxim: "The clergy ought to contribute to the expenses of the state, let the Old Testament say what it will." They concluded from this passage that the author of this memorial was better versed in the language of the tax-gatherers, than in that of religion.

6.—Of Monasteries

The least degree of common sense will let us see that bodies designed for a perpetual continuance should not be allowed to sell their funds for life, nor to borrow for life; unless we want them to be heirs to all those who have no relatives and to those who do not choose to have any. These men play against the people, but they hold the bank themselves.

7.—Of the Luxury of Superstition

"Those are guilty of impiety towards the gods," says Plato,^p "who deny their existence; or who, while they believe it, maintain that they do not interfere with what is done below; or, in fine, who think that they can easily appease them by sacrifices: three opinions equally pernicious." Plato has here said all that the clearest light of nature has ever been able to say in point of religion. The magnificence of external worship has a principal connection with the institution of the state. In good republics, they have curbed not only the luxury of vanity, but even that of superstition. They have introduced frugal laws into religion. Of this number are many of the laws of Solon; many of those of Plato on funerals, adopted by Cicero; and, in fine, some of the laws of Numa on sacrifices.^q

Birds, says Cicero,^r and paintings begun and finished in a day are gifts the most divine. We offer common things, says a Spartan,^s that we may always have it in our power to honor the gods.

^p "Of Laws," book X.
^q "Rogum vino ne respergito."—
 "Law of the Twelve Tables."
^r Cicero derives these appropriate

words from Plato ("Laws," book XII.).
 —Ed.
^s Plutarch attributes this beautiful idea to Lycurgus.—Ed.

tion of the kingdom and the new one is not; the former agrees with the climate and very often the new one is opposed to it. Moreover, the citizens become disgusted with their laws, and look upon the government already established with contempt; they conceive a jealousy against the two religions, instead of a firm belief in one; in a word, these innovations give to the state, at least for some time, both bad citizens and bad believers.

12.—Of *penal Laws*

Penal laws ought to be avoided in respect to religion: they imprint fear, it is true; but as religion has also penal laws which inspire the same passion, the one is effaced by the other, and between these two different kinds of fear the mind becomes hardened.

The threatenings of religion are so terrible, and its promises so great, that when they actuate the mind, whatever efforts the magistrate may use to oblige us to renounce it, he seems to leave us nothing when he deprives us of the exercise of our religion, and to bereave us of nothing when we are allowed to profess it.

It is not, therefore, by filling the soul with the idea of this great object, by hastening her approach to that critical moment in which it ought to be of the highest importance, that religion can be most successfully attacked: a more certain way is, to tempt her by favors, by the conveniences of life, by hopes of fortune; not by that which revives, but by that which extinguishes the sense of her duty; not by that which shocks her, but by that which throws her into indifference at the time when other passions actuate the mind, and those which religion inspires are hushed into silence. As a general rule in changing a religion the invitations should be much stronger than the penalties.

The temper of the human mind has appeared even in the nature of punishments. If we take a survey of the persecutions in Japan,^v we shall find that they were more shocked at cruel torments than at long sufferings, which rather weary than affright, which are the more difficult to surmount, from their appearing less difficult.

^v In the "Collection of Voyages that contributed to the establishment of an East India Company," vol. v.

In a word, history sufficiently informs us that penal laws have never had any other effect than to destroy.

13.—*A most humble Remonstrance to the Inquisitors of Spain and Portugal*

A Jewess of eighteen years of age, who was burned at Lisbon at the last *auto-da-fé*, gave occasion to the following little piece, the most idle, I believe, that ever was written. When we attempt to prove things so evident we are sure never to convince.

The author declares, that though a Jew he has a respect for the Christian religion; and that he should be glad to take away from the princes who are not Christians a plausible pretence for persecuting this religion.

“You complain,” says he to the Inquisitors, “that the Emperor of Japan caused all the Christians in his dominions to be burned by a slow fire. But he will answer, we treat you who do not believe like us, as you yourselves treat those who do not believe like you; you can only complain of your weakness, which has hindered you from exterminating us, and which has enabled us to exterminate you.

“But it must be confessed, that you are much more cruel than this emperor. You put us to death who believe only what you believe, because we do not believe all that you believe. We follow a religion, which you yourselves know to have been formerly dear to God. We think that God loves it still, and you think that he loves it no more: and because you judge thus, you make those suffer by sword and fire who hold an error so pardonable as to believe that God still loves what he once loved.^w

“If you are cruel to us, you are much more so to our children; you cause them to be burned because they follow the inspirations given them by those whom the law of nature and the laws of all nations teach them to regard as gods.

“You deprive yourselves of the advantage you have over the Mahommedans, with respect to the manner in which their religion was established. When they boast of the number of their believers, you tell them that they have obtained them by

^w The source of the blindness of the Jews is their not perceiving that the economy of the gospel is in the order

of the decrees of God; and that it is in this light a consequence of his immutability.

violence, and that they have extended their religion by the sword; why then do you establish yours by fire?

“When you would bring us over to you, we object to a source from which you glory to have descended. You reply to us, that though your religion is new, it is divine; and you prove it from its growing amidst the persecutions of pagans, and when watered by the blood of your martyrs; but at present you play the part of the Diocletians, and make us take yours.

“We conjure you, not by the mighty God whom both you and we serve, but by that Christ, who, you tell us, took upon him a human form, to propose himself as an example for you to follow; we conjure you to behave to us as he himself would behave were he upon earth. You would have us become Christians, and you will not be so yourselves.

“But if you will not be Christians, be at least men; treat us as you would, if having only the weak light of justice which nature bestows, you had not a religion to conduct, and a revelation to enlighten you.

“If Heaven has had so great a love for you as to make you see the truth, you have received a singular favor; but is it for children who have received the inheritance of their father, to hate those who have not?

“If you have this truth, hide it not from us by the manner in which you propose it. The characteristic of truth is its triumph over hearts and minds, and not that impotency which you confess when you would force us to receive it by tortures.

“If you were wise, you would not put us to death for no other reason than because we are unwilling to deceive you. If your Christ is the son of God, we hope he will reward us for being so unwilling to profane his mysteries; and we believe that the God whom both you and we serve will not punish us for having suffered death for a religion which he formerly gave us, only because we believe that he still continues to give it.

“You live in an age in which the light of nature shines more brightly than it has ever done; in which philosophy has enlightened human understandings; in which the morality of your gospel has been better known; in which the respective rights of mankind with regard to each other and the empire which one conscience has over another are best understood. If you do not, therefore, shake off your ancient prejudices,

which, whilst unregarded, mingle with your passions, it must be confessed that you are incorrigible, incapable of any degree of light or instruction; and a nation must be very unhappy that gives authority to such men.

"Would you have us frankly tell you our thoughts? You consider us rather as your enemies than as the enemies of your religion; for if you loved your religion you would not suffer it to be corrupted by such gross ignorance.

"It is necessary that we should warn you of one thing; that is, if any one in times to come shall dare to assert, that in the age in which we live, the people of Europe were civilized, you will be cited to prove that they were barbarians; and the idea they will have of you will be such as will dishonor your age, and spread hatred over all your contemporaries."

14.—*Why the Christian Religion is so odious in Japan*

We have already mentioned the perverse temper of the people of Japan.* The magistrates considered the firmness which Christianity inspires, when they attempted to make the people renounce their faith, as in itself most dangerous; they fancied that it increased their obstinacy. The law of Japan punishes severely the least disobedience. The people were ordered to renounce the Christian religion; they did not renounce it; this was disobedience; the magistrates punished this crime; and the continuance in disobedience seemed to deserve another punishment.

Punishments among the Japanese are considered as the revenge of an insult done to the prince; the songs of triumph sung by our martyrs appeared as an outrage against him: the title of martyr provoked the magistrates; in their opinion it signified rebel; they did all in their power to prevent their obtaining it. Then it was that their minds were exasperated, and a horrid struggle was seen between the tribunals that condemned and the accused who suffered; between the civil laws and those of religion.

own nature, different from those of religion; this is an important principle: but this principle is itself subject to others, which must be inquired into.

1. It is in the nature of human laws to be subject to all the accidents which can happen, and to vary in proportion as the will of man changes; on the contrary, by the nature of the laws of religion, they are never to vary. Human laws appoint for some good; those of religion for the best: good may have another object, because there are many kinds of good; but the best is but one, it cannot therefore change. We may alter laws, because they are reputed no more than good; but the institutions of religion are always supposed to be the best.

2. There are kingdoms in which the laws are of no value as they depend only on the capricious and fickle humor of the sovereign. If in these kingdoms the laws of religion were of the same nature as the human institutions, the laws of religion too would be of no value. It is, however, necessary to the society that it should have something fixed; and it is religion that has this stability.

3. The influence of religion proceeds from its being believed; that of human laws from their being feared. Antiquity accords with religion, because we have frequently a firmer belief in things in proportion to their distance, for we have no ideas annexed to them drawn from those times which can contradict them. Human laws, on the contrary, receive advantage from their novelty, which implies the actual and particular attention of the legislator to put them in execution.

3.—*Of civil Laws contrary to the Law of Nature*

If a slave, says Plato, defends himself, and kills a freeman, he ought to be treated as a parricide.^a This is a civil law which punishes self-defence, though dictated by nature.

The law of Henry VIII which condemned a man without being confronted by witnesses was contrary to self-defence. In order to pass sentence of condemnation, it is necessary that the witnesses should know whether the man against whom they make their deposition is he whom they accuse, and that this man be at liberty to say, I am not the person you mean.

The law passed during the same reign, which condemned

^a Lib. IX. "on Laws."

every woman, who, having carried on a criminal commerce, did not declare it to the king before her marriage, violated the regard due to natural modesty. It is as unreasonable to oblige a woman to make this declaration, as to oblige a man not to attempt the defence of his own life.

The law of Henry II which condemned the woman to death who lost her child, in case she did not make known her pregnancy to the magistrate, was not less contrary to self-defence. It would have been sufficient to oblige her to inform one of her nearest relatives, who might watch over the preservation of the infant.

What other information could she give in this situation, so torturing to natural modesty? Education has heightened the notion of preserving that modesty; and in those critical moments scarcely has she any idea remaining of the loss of life.

There has been much talk of a law in England, which permitted girls seven years old to choose a husband.^b This law was shocking in two ways; it had no regard to the time when nature gives maturity to the understanding, nor to that in which she gives maturity to the body.

Among the Romans, a father might oblige his daughter to repudiate her husband, though he himself had consented to the marriage.^c But it is contrary to nature for a divorce to be in the power of a third person.

A divorce can be agreeable to nature only when it is by consent of the two parties, or at least of one of them; but when neither consents it is a monstrous separation. In short, the power of divorce can be given only to those who feel the inconveniences of marriage, and who are sensible of the moment when it is for their interest to make them cease.

4.—*The same Subject continued*

Gundebald, King of Burgundy, decreed, that if the wife or son of a person guilty of robbery did not reveal the crime, they were to become slaves.^d This was contrary to nature: a wife to inform against her husband! a son to accuse his father! To avenge one criminal action, they ordained another still more criminal.

The law of Recessuinthus permits the children of the adulter-

^b Mr. Bayle, in his "Criticism on the History of Calvinism," speaks of this law, p. 263.

^c See Law 5, in the code "de repudiis et judicio de moribus sublato."

^d Law of the Burgundians, tit. 17

ess, or those of her husband, to accuse her, and to put the slaves of the house to the torture.^e How iniquitous the law, which, to preserve a purity of morals, overturns nature, the origin, the source of all morality!

With pleasure we behold in our theatres a young hero ^f express as much horror against the discovery of his mother-in-law's guilt, as against the guilt itself. In his surprise, though accused, judged, condemned, proscribed, and covered with infamy, he scarcely dares to reflect on the abominable blood whence Phædra sprang; he abandons the most tender object, all that is most dear, all that lies nearest his heart, all that can fill him with rage, to deliver himself up to the unmerited vengeance of the gods. It is nature's voice, the sweetest of all sounds, that inspires us with this pleasure.

5.—*Cases, in which we may judge by the Principles of the civil Law in limiting the Principles of the Law of Nature*

An Athenian law obliged children to provide for their fathers when fallen into poverty; ^g it excepted those who were born of a courtesan,^h those whose chastity had been infamously prostituted by their father, and those to whom he had not given any means of gaining a livelihood.ⁱ

The law considered that, in the first case, the father being uncertain, he had rendered the natural obligation precarious; that in the second, he had sullied the life he had given, and done the greatest injury he could do to his children in depriving them of their reputation; that in the third, he had rendered insupportable a life which had no means of subsistence. The law suspended the natural obligation of children, because the father had violated his; it looked upon the father and the son as no more than two citizens, and determined in respect to them only from civil and political views; ever considering that a good republic ought to have a particular regard to manners. I am apt to think, that Solon's law was a wise regulation in the first two cases, whether that in which nature has left the son in ignorance with regard to his father, or that in which she even seems to ordain he should

^e In the code of the Visigoths, lib. III. tit. 4, sec. 13.

^f Hippolyte; see the "Phædre" of Racine, act. IV. sc. 2.—Ed.

^g Under pain of infamy, another under pain of imprisonment.

^h Plutarch, "Life of Solon."

ⁱ Ibid., and Gallienus, in "exhort, ad art." cap. viii.